

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

Re: F. W. Whitcomb construction Corporation
Declaratory Ruling #286

CHAIR'S PROPOSED DISMISSAL ORDER

I. BACKGROUND

On May 10, 1993, F.W. Whitcomb Construction Corporation ("Whitcomb") appealed from Advisory Opinion #4-103 ("AO #4-103") and petitioned for a declaratory ruling ("Petition").

On December 10, 1993, the Environmental Board ("Board") issued a continuance at the parties' request to allow for settlement negotiations.

On July 28, 1994, Whitcomb filed an agreement ("Agreement") between itself, the neighbors granted party status in this Petition ("Neighbors"), the City of Winooski, and the town of Colchester.

On April 29, 1996, the District #4 Environmental Commission ("Commission") issued to Whitcomb Land Use Permit #4C0566-2 ("Commission Permit") pursuant to Re: F.W. Whitcomb Construction Co., #4C0566-2, Findings of Fact, Conclusions of Law, and Order (April 26, 1996) ("Commission Decision").

On May 15, 1996, Whitcomb filed a motion to alter the Commission Permit. The motion pertains to condition #19 of the Commission Permit and finding of fact # 17 of the Commission Decision.

On November 25, 1996, the District #4 Coordinator issued a memorandum to the parties regarding Whitcomb's May 15, 1996 motion to alter.

On December 4, 1996, Whitcomb filed a letter with the Commission which substituted a permit amendment application for the issues raised in Whitcomb's May 15, 1996 motion to alter.

II. PROPOSED DISMISSAL

AO #4-103 pertained to whether there was Act 250 jurisdiction over Whitcomb's rock quarry on Routes 2 and 7 in the Town of Colchester. AO #4-103 concluded that an Act 250 permit was required.

Pursuant to the Agreement, the parties thereto agreed that if an Act 250 permit was issued to Whitcomb pursuant to the terms of the Agreement, then Whitcomb would

not contest the jurisdictional determination made in AO #4- 103. There has been no appeal from the Commission Permit and the Commission Decision.

Act 250 jurisdiction exists over the project described in the Commission Permit and Commission Decision, and the project is authorized to occur on the same land which was at issue in AO #4-103. A case is moot if the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. In re Barlow, 160 Vt. 5 13, 5 18 (1993). Since jurisdiction has attached as provided in the Commission Permit and Commission Decision, the Petition is now moot and may be dismissed.

III. ORDER

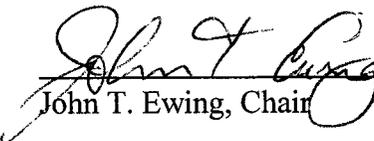
1. Act 250 jurisdiction exists over the lands identified in Book 37/91, Pages 253-256/401-402, of the land records of the Town of Colchester, Vermont, and over the expansion and operation of a stone quarry within a 15 1 acre tract of land pursuant to the Commission Permit and Commission Decision.

2. The Petition is moot and is dismissed with prejudice.

3. Pursuant to Environmental Board Rule 16, any party who objects to this Order, in whole or part, shall file an objection with supporting memorandum of law on or before **Wednesday, February 12, 1996**. If no objection is filed, then this Order shall become final.

Dated at Montpelier, Vermont this 22nd day of January, 1997

VERMONT ENVIRONMENTAL BOARD



John T. Ewing, Chair